

## FACT SHEET

# **Americans with Disabilities Act - Title I** **relating to employee health plans** (Public Law 101-336)

### **What are the general guidelines for assessing whether or not an employee health plan does not violate the Americans with Disabilities Act?**

Disability-based distinctions are permitted only if the distinction is not a "subterfuge" for the purposes of evading the Act.

Decisions cannot be motivated by concerns about the impact of the individual's disability on the employer's health plan.

Employees with disabilities must be accorded "equal access" to whatever health benefits the employer provides to employees without disabilities.

An employer may not make an employment decision about any person, whether or not that person has a disability, because of concerns about the impact on its health plan by the disability of someone else with whom the person has a relationship (i.e., a dependent).

### **What is a disability-based distinction?**

A disability-based distinction is one which "singles out a particular disability, a discrete group of disabilities, disability in general, or a single procedure or treatment of a particular disability or discrete group of disabilities. Examples include

- a special cap on the treatment of any pre-existing blood disorders, if the plan does not exclude other pre-existing conditions; and
- the exclusion of a drug used only to treat AIDS.

Not all health-related plan distinctions discriminate on the basis of disability. Distinctions that are not based on a disability are permissible. Examples given by the EEOC of non-disability based distinctions include the following:

- different levels of coverage for physical conditions and mental/nervous conditions;
- different levels of coverage for vision care and medical care;
- pre-existing condition clauses;

- coverage limits on medical procedures that are "not exclusively, or nearly exclusively utilized for the treatment of a particular disability" (e.g., limits on the number of blood transfusions or x-rays that the plan will pay for); and
- lifetime or annual caps on plan benefits.

### **When is a disability-based distinction not a subterfuge?**

A disability-based distinction in a health plan is permissible only when it is not a "subterfuge." A distinction is not a "subterfuge" when it is "justified by the risks or costs associated with the disability." Whether or not a particular disability-based distinction is a subterfuge will be determined "on a case by case basis." Examples include

- a cap on a particular catastrophic disability would not be deemed to be discriminatory where the health plan treated all similarly catastrophic conditions the same way;
- where the health plan could demonstrate that the disability-based distinction was "justified by legitimate actuarial data, or by actual or reasonably anticipated experience, and that conditions with comparable actuarial data and/or experience are treated in the same fashion;"
- where the health plan could prove that the disability-based distinction was necessary to "ensure that the challenged health insurance plan satisfies the commonly accepted or legally required standards for fiscal soundness" (e.g., where the treatment of a discrete group of disabilities would have been so expensive as to cause the plan to become insolvent);
- where the health plan can prove that the disability-based distinction is necessary to prevent a drastic alteration in the scope of coverage or level of benefits provided to all employees; and
- in the case where a particular treatment is excluded, where the plan can prove that treatment does not have any medical value.

### **Does ADA apply to all health plans, even those that were in existence prior to the ADA's effective date?**

Yes.

*The above information was excerpted from the Equal Employment Opportunity Commission's interim guidelines issued June 8, 1993 on the application of the Americans with Disabilities Act to employee health plans.*

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